

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREYTHON TORRES,

Defendant-Appellant.

UNPUBLISHED

September 18, 2008

No. 279241

Wayne Circuit Court

LC No. 07-006149-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant Greython Torres appeals as of right his bench conviction of two counts of armed robbery,¹ and possession of a firearm during the commission of a felony.² The trial court sentenced Torres to concurrent prison terms of 5 to 15 years for each armed robbery conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. We affirm.

I. Basic Facts And Procedural History

At approximately midnight on February 9, 2007, Fred Meinke and his girlfriend, Theresa Bean, went to the V-West Party Store on the corner of Lansing and Vernor Streets in Detroit, to buy beer and cigarettes. There were about six people, apparently customers, in the store when they entered it. Meinke, who testified that he was “pretty perceptive of people,” noticed an individual wearing a beige Carhartt coat who had a teardrop tattoo on his face. He did not know the individual and did not speak to him inside the store.

After making their purchases, Meinke and Bean walked out of the store. Meinke noticed three cars parked near the front of the store. One was a black four-door with a beige interior, and the second was a blue van, but Meinke could not provide a description of the third vehicle. Meinke and Bean started walking south down Lansing Street. The black four-door car, containing at least five men, drove past them. About half a block further down Lansing Street, four men approached Meinke and Bean. One, who was wearing a beige Carhartt coat, said, “I

¹ MCL 750.529.

² MCL 750.227b.

got a gun.” The man then pulled the weapon and told Meinke and Bean, “Get on the ground, don’t look at my face.” Although this man had covered his face with a white bandana, Meinke recognized the man from his forehead and eyes as the same man he had noticed in the store, although he could not see the teardrop tattoo. Meinke did not recognize the other three men.

Meinke and Bean got down on the ground. Meinke testified that one of the other three men, “the shorter gentleman, kind of longer shiny haired person” who was wearing a “puffy jacket,” went through his pockets and took two \$10 bills. Another of the three men was taller and wore beige boots with the tongues rolled out and a black jacket with fur around the hood. The taller man with the beige boots stomped Meinke’s face two or three times when Meinke raised his head. Bean was lying on the ground next to Meinke, but Meinke did not notice if they took anything from her. He did not see how the four men left. Meinke did not see the black four-door car at any time after it drove past him and Bean.

Two days after the incident, Meinke met with Detroit police officers to view a photographic lineup. One of the photographs jumped out at him as the man he had noticed in the party store who later held a gun on him. When asked how he identified this man from the photograph, Meinke testified, “Just because he had the distinct look. When I seen him in the store, just coat he was wearing, you know. I just knew what he looked like, it just stuck in my head, stood out.” The photograph was admitted into evidence, and Meinke identified Torres as the man in the photograph.

On cross-examination, Meinke testified that he picked out Torres’s photograph “from seeing him at the store, and the tattoo, and the coat he had on” and because of “the eyes and forehead.” Asked if there was anything else that helped him pick out this individual, Meinke stated, “nothing at all.” Meinke acknowledged that, in the three-page statement he gave to the police right after the incident, he did not mention that the person in the store had a teardrop tattoo. Meinke also acknowledged testifying at the preliminary examination that a gentleman wearing “the striped shirt” and “beige boots” kicked him in the face, but said that he was mistaken when he said this. Meinke further acknowledged that he had told the police that five men walked toward him and Bean and that he described them as five Hispanic males.

On redirect examination, Meinke testified that he heard the man with the gun tell the other men, after he commanded Meinke to lie down, that the money was in his front pocket.

Theresa Bean testified that she saw a four-door black car drive past as she and Meinke were walking down Lansing Street from the store; she had not seen the car before. “At least three or four” men, who she had never seen before, approached them. She did not see their faces and could only say that they were “around like between 19 and maybe 22.” One of the men wore a black jacket with fur around the hood and another wore a beige jacket. The men came within a few feet of her when one pulled out a gun and said “hit the ground” or “get to the ground.” She did not recall which man pulled the gun. The men went through her pockets, and they took a \$10 bill, her Bridge card, and her cell phone. She heard them ask Meinke, “Where is it?” and heard them “kicking him or something.” On cross-examination, Bean reiterated that she did not look directly at any of the men’s faces and did not see anyone’s face. She met with the police a day or two later and was asked to look at photographs.

Detroit Police Officer Leo Rhodes responded to a call from Officer Brian Gadwell regarding a black Chevy Lumina and persons suspected of a robbery. When he arrived at the corner of West Vernor and Clark, which is two blocks from Vernor and Lansing, he saw a marked police car that had stopped the Lumina, and Officer Rhodes assisted by taking Torres out of the car. Officer Rhodes was looking in particular for a cell phone that was taken in the robbery and found a phone in Torres's pocket. Officer Gadwell called the complainant's number from his personal phone, and the cell phone taken from Torres's pocket rang. Officer Rhodes found nothing else that potentially came from the robbery. Five people other than Torres were in the Lumina. They included codefendants Rosario and Jimenez. On cross-examination, Officer Rhodes testified that the person he took the phone from, Torres, was wearing a black coat with fur on the hood. Officer Rhodes did observe one man who had been in the car wearing a tan or beige Carhartt coat with a bandana on his neck. He could not remember that man's name.

Detroit Police Officer Brian Gadwell testified that he interviewed the two complainants, who gave him a description of the individuals and a four-door black car, possibly a Lumina or Oldsmobile. The complainants indicated that one of the robbers was wearing a beige Carhartt coat, and the rest were wearing black coats. One of the complainants, Theresa Bean, gave Officer Gadwell the number for her cell phone, a blue and silver Team Mobile phone, which had been taken in the robbery. Officer Gadwell and his partner gave a description of the car and suspects over the air and within five minutes a marked police car advised that they had a vehicle matching the description containing five to six males, wearing the described clothes. When Officer Gadwell arrived at the scene, Officer Rhodes had recovered a cell phone from one of the occupants of the Lumina that matched the description Bean gave of her phone. From his personal cell phone Officer Gadwell dialed the number Bean had given him, the recovered cell phone rang, and Officer Gadwell's cell phone number appeared on the recovered phone.

In his report, Officer Gadwell noted that one of the individuals taken from the black Lumina was wearing a beige Carhartt coat and had a white scarf around his neck-face area. He identified codefendant Jimenez as the person wearing the beige Carhartt coat with the white scarf. All of the other men in the car were wearing black or dark-colored coats. On cross-examination, Officer Gadwell acknowledged that his report stated that the individual wearing the beige Carhartt coat had the stolen cell phone in his pocket and that Officer Rhodes took the phone from him. Officer Gadwell stated, "Reading my report, I believe I might have mixed it up." On redirect-examination, Officer Gadwell testified that he did not witness the phone being taken from any of the suspects, and information in his report about which individual had the cell phone was relayed to him by other officers. He remembered Torres as wearing a black or dark coat that evening. Officer Gadwell never saw the phone in Torres's possession.

The jury convicted Torres as noted above, and he now appeals.

II. Sufficiency Of The Evidence

A. Standard Of Review

Torres argues that the evidence was insufficient to identify him as the person who possessed the gun. We review de novo a challenge to the sufficiency of the evidence in a bench trial by reviewing the evidence in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a

reasonable doubt.³ We will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses.⁴ And we must resolve all conflicts in the evidence in favor of the prosecution.⁵

B. Analysis

The trial court relied on Meinke's testimony to find that Torres was the gunman. Meinke testified that he noticed Torres in a party store shortly before the robbery because of his beige Carhartt coat and a teardrop tattoo on his face. Meinke stated that the gunman wore a beige Carhartt coat, but his face was covered with a white bandanna so Meinke could not see the tattoo. However, Meinke was adamant that the gunman was the same person he had seen in the store because he recognized the man's eyes and forehead. Meinke identified Torres as the gunman in a photographic lineup a few days later, testifying that he recognized Torres's "distinct look" and that he picked Torres's photograph "from seeing him at the store, and the tattoo, and the coat he had on," and because of "the eyes and the forehead." Therefore, Meinke's testimony was sufficient to identify Torres as the gunman.⁶

Nevertheless, Torres argues that Meinke's testimony was not reliable because of conflicting testimony from the arresting officers, who testified that shortly after the offense, Torres was wearing a black or dark coat with fur on the hood, while codefendant Richard Jimenez was wearing a beige Carhartt coat. Additionally, Officer Rhodes testified that he removed Bean's cell phone from Torres's pocket, but a Officer Gadwell's report indicated that Bean's cell phone was taken from the pocket of the individual wearing a beige Carhartt coat, although Officer Gadwell admitted that he may have been mistaken in his report. With regard to the conflicting testimony about the clothing, the prosecutor argued that 15 to 20 minutes had passed between the robbery and the apprehension of Torres and the others in a black Lumina, so it was possible that Torres and Jimenez exchanged coats in the car.

Despite some conflicts in the testimony, the trial court found that Meinke's testimony was "consistent, believable and adamant" that Torres was the person who pulled the gun, the person he saw in the store, and the person he recognized by his face and the shape of his head. The credibility of Meinke's testimony was for the trial court, as the trier of fact, to resolve and we will not resolve it anew on appeal.⁷ The trial court did not clearly err in relying on Meinke's "consistent," "believable," and "adamant" testimony to establish Torres's identity as the gunman during the robbery.⁸

³ *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

⁴ *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

⁵ *Wilkens*, *supra* at 738; *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

⁶ See *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

⁷ *Id.*

⁸ MCR 2.613(C).

III. Great Weight Of The Evidence

A. Standard Of Review

Torres argues that the verdict is against the great weight of the evidence. Torres filed two motions for a new trial on this basis, each of which was denied. We review for an abuse of discretion the denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence.⁹

B. Analysis

Torres's argument is again based on the conflict between Meinke's testimony that the gunman wore a beige Carhartt coat and a white bandanna, Officer Gadwell's testimony that codefendant Richard Jimenez was wearing beige Carhartt coat with a white scarf at the time of arrest, and Officer Rhodes's testimony that Torres was wearing a black fur-trimmed coat. "Conflicting testimony and questions of credibility are generally insufficient grounds for granting a new trial."¹⁰ We find no abuse of discretion in the trial court's denial of Torres's motions for a new trial.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

⁹ *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008).

¹⁰ *Id.*